

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MICHEL PAYNE,

Plaintiff,

vs.

PETER KIEWIT SONS', INC.,  
ROBERT EDICK, MARK JENSEN and  
KEVIN MURRAY,

Defendants.

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8:06CV686

ORDER

This matter is before the court *sua sponte*. On November 22, 2006, the plaintiff returned the summons for Kevin Murray unexecuted. **See** Filing No. 10. The document noted that Kevin Murray is deceased. ***Id.***; **see also** the parties' Report of Parties' Planning Conference (Filing No. 30). In accordance with Federal Rule of Civil Procedure 25(a), the plaintiff has 90 days, from the time the death is suggested in the record, to move for substitution of the deceased party or the action shall be dismissed against the deceased party. Accordingly,

**IT IS ORDERED:**

**On or before March 30, 2007**, the plaintiff shall file a motion for substitution of parties, if appropriate, in accordance with the provisions of Rule 25, or file a motion to voluntarily dismiss Kevin Murray as a defendant in this action, in accordance with Rule 41(a). If the plaintiff fails to comply with this order the defendant Kevin Murray may be dismissed as a party pursuant to Fed. R. Civ. P. 41(b).

DATED this 9th day of March, 2007.

BY THE COURT:

s/Thomas D. Thalken  
United States Magistrate Judge